

A ROYAL MEDICAL TRUST (REGD) AND ANOTHER.

v.

UNION OF INDIA AND ANOTHER.

B (Writ Petition (Civil) No.705 Of 2014)

AUGUST 20, 2015

[ANIL R. DAVE, VIKRAMAJIT SEN AND  
UDAY UMESH LALIT, JJ.]

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*Education/Educational Institutions – Denial of approval by Central Government (by order dated 15.7.2014) (1) to new medical colleges seeking permission to admit students to the first year of MBBS course; (2) to increase in intake of seats in first year MBBS course to the already approved colleges; and (3) to renewal of permission – For the academic session 2014-15 – In view that the Medical Council of India (MCI) was not able to verify/assess the compliance report of the colleges – Writ petitions by Medical Colleges – Before Supreme Court as well as High Courts – Challenging the orders denying approval – Plea of MCI that verification of the compliance report could not be undertaken as it was impermissible to undertake any inspection after 15th June in view of the decision in \*Priya Gupta case – In some petitions High Court directed the Central Government and MCI to undertake fresh inspection, against which MCI has come in appeal – In some petitions High Court refused to grant interim relief, against which applicants have come in appeal – Disposing of the writ petitions and appeals, Held:*

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*Before taking any adverse decision as regards scheme u/s.10A of the Medical Council Act, the applicant must be afforded reasonable opportunity – Such opportunity is required to be granted not only at the initial stage (for*

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*establishment of new college) but also in case of subsequent* A  
*renewal – The timely assessment is integral to the scheme*  
*– MCI and Central Government are obliged to conduct*  
*renewal inspection every year so as to ensure that*  
*establishment and expansion of hospital facilities are*  
*completed in time as per the scheme – The schedule under* B  
*the Regulations, therefore, is required to accommodate and*  
*provide for adequate time limits for stage-wise consideration*  
*– The schedule as amended by notification dated 21.09.2012*  
*does not provide for stage-wise consideration, while the draft* C  
*schedules submitted by the MCI do make provisions for the*  
*same – Hence, the schedule provided by MCI is directed to*  
*be given statutory status – Central Government was expected*  
*to exercise its power under the Note to the Schedule of*  
*Regulations to modify the time limits in the schedule, subject* D  
*to observation of deadline for admission i.e. 30th September*  
*– Since the deadline for admission is over, the cases where*  
*permissions were sought for establishment of new colleges*  
*or for increase in intake capacity, no relief can be granted to*  
*– However, in the cases of the applicants seeking renewal of* E  
*permission, interim order (to the effect that they were granted*  
*permission to give fresh admission in first year of MBBS*  
*subject to their undertaking that there was no deficiency) is*  
*made absolute – Medical Council Act, 1956 – s.10A(7) –*  
*Establishment of the Medical College Regulations, 1999 –* F  
*Para 8, Schedule (as modified by the Notifications dated 28-*  
*8-2009 and 21-9-2012) – Principle of Natural Justice.*

*Establishment of New Medical College Regulations,*  
*1999 – Schedule – Modification of – Permissibility – Held:* G  
*Though in \*Priya Gupta case, the schedule was required to*  
*be observed strictly and scrupulously, but in view of the*  
*amendment of the Regulations thereafter, (incorporating a*  
*Note empowering the Central Government to modify the*  
*stages and time limits in the Schedule), the Central* H

A *Government is statutorily empowered to modify the schedule, subject to observation of deadline for admission to the MBBS course (i.e. 30th September).*

B **Disposing of the appeals and the writ petitions, the Court.**

C **HELD : 1. While considering the Scheme u/s. 10A of the Medical Council Act, the Medical Council of India (MCI) and the Central Government are required to have due regard to the factors referred to in sub-section (7) thereof. If the initial Scheme itself is found to be defective or is to be disapproved, sub-section (3)(a) and proviso to sub-section (4) of Section 10A oblige the Medical Council of India and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The Statute thus recognizes that before any adverse decision is taken as regards the Scheme, the applicant must be afforded reasonable opportunity. The provision requiring such opportunity being given to the applicant applies not only at the initial stage when permission for establishment of new College is under consideration, but must apply even in cases of subsequent renewal of such permission. [Paras 23, 24] [568-B-C; 569-H; 570-A]**

F *Swamy Devi Dayal Hospital & Dental College vs. Union of India 2013 (14) SCR 105: (2014) 13 SCC 506 – relied on.*

G **2. The timely assessment is integral to the Scheme u/s. 10A and the MCI and the Central Government are therefore obliged and required to conduct renewal inspections every year so as to ensure that the establishment of the Medical College and expansion of hospital facilities are completed in time and in accordance with the Scheme. [Para 24] [569-G]**

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3. The MCI and the Central Government have been A  
 vested with monitoring powers under Section 10A and  
 the Regulations. It is expected of these authorities to  
 discharge their functions well within the statutory  
 confines as well as in conformity with the Schedule to  
 the Regulations. If there is inaction on their part or non- B  
 observance of the time Schedule, it is bound to have  
 adverse effect on all concerned. The MCI and the Central  
 Government must therefore show due diligence right  
 from the day when the applications are received. The  
 Schedule giving various stages and time limits must C  
 accommodate every possible eventuality and at the  
 same time must comply with the requirements of  
 observance of natural justice at various levels. The  
 Schedule must ideally take care of initial assessment, D  
 inspection, intimation of the result or outcome of the  
 inspection, if compliance is reported, compliance  
 verification and the result of such verification. [Para 27]  
 [571-D-E; G-H; 572-A-H]

4. The Schedule which was brought in force by way E  
 of an amendment dated 21.09.2012 does not provide for  
 such stage-wise consideration. It simply gives four  
 stages without indicating any time limits to ensure grant  
 of such reasonable opportunity in case the decisions of  
 disapproval are taken against the applicants. It also does F  
 not speak of any compliance verification. In the present  
 cases, the inspections were undertaken in and around  
 April/May 2014 and the letters of disapproval were sent  
 by the Central Government on or about 15th July, 2014. G  
 Though the compliance was reported, no verification in  
 that behalf was undertaken. [Para 26] [571-A-C]

*Priyadarshini Dental College and Hospital v. Union of  
 India and others* 2011 (2) SCR 945: (2011) 4 SCC 623 – H  
 relied on.

A        5. As against the Schedule brought in by Notification  
dated 21.09.2012, the draft Schedules submitted by the  
MCI do make provisions for stage wise consideration  
and set time limits therefor. They also provide for hearing  
by the Central Government under Section 10A(4) and  
B compliance verification assessment by the MCI. The  
draft Schedules suggested and placed by the MCI will  
now take care of all foreseeable situations and ensure  
availability of opportunity at all possible stages. The draft  
C Schedule so submitted by the MCI be given proper  
statutory status. [Para 28] [573-B-C]

6. In the present cases, the Central Government did  
not choose to extend the time limits in the Schedule  
despite being empowered by Note below the Schedule.  
D Though the Central Government apparently felt  
constrained by the directions in *\*Priya Gupta* case, it did  
exercise that power in favour of Government Medical  
Colleges. The decision of this Court in *\*Priya Gupta* case  
undoubtedly directed that Schedule to the Regulations  
E must be strictly and scrupulously observed. However,  
subsequent to that decision, the Regulations stood  
amended, incorporating a Note empowering the Central  
Government to modify the stages and time limits in the  
F Schedule to the Regulations. The effect of similar such  
empowerment and consequential exercise of power as  
expected from the Central Government has been  
considered by this Court in *\*\*Priyadarshini* case. The  
G Central Government is thus statutorily empowered to  
modify the Schedule in respect of class or category of  
applicants, for reasons to be recorded in writing.  
Because of subsequent amendment and incorporation  
of the Note, the matter is now required to be seen in the  
light of and in accord with *\*\*Priyadarshini* case, where  
H similar Note in *pari materia* Regulations was considered

by this Court. The directions in *\*Priya Gupta* must now be understood in the light of such statutory empowerment and it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However the dead line namely 30th of September for making admissions to the first MBBS course, must always be observed. [Para 29] [573-B-H; 574-A-B]

*\*\*Priyadarshini Dental College and Hospital v. Union of India and others* 2011 (2) SCR 945: (2011) 4 SCC 623 – relied on.

*\*Priya Gupta v. State of Chhattisgarh and others* 2012 (5) SCR 768: (2012) 7 SCC 433; *Mridul Dhar v. Union of India* 2005 (1) SCR 380: (2005) 2 SCC 65; *Medical Council of India vs. Madhu Singh* 2002 (2) Suppl. SCR 228: (2002) 7 SCC 258 – referred to.

7. In the present case, since the deadline for making admissions was over and there was no formal permission to establish new Medical Colleges or to increase the intake capacity in respect of existing Colleges, applicants in Categories I and II were not considered fit for grant of any interim relief. For the same reasons no relief can be granted to them. Consequently, the writ petitions and appeals arising from the special leave petitions in Categories I and II except one arising out of SLP(C) No.23512 of 2014 are dismissed. Said appeal from SLP(C) No.23512 of 2014 at the instance of the MCI is allowed. [Para 30] [574-C-D]

8. The interim relief, granted in respect of those falling in Category III, vide orders dated 18.09.2014 and 25.09.2014 are made absolute. By the interim orders the colleges were permitted to give fresh admissions in the

A first year of the M.B.B.S. Course, subject to certain conditions mentioned in those orders. The Medical Colleges in that category were required to file an undertaking on same terms as Government Medical Colleges that there was no deficiency and that if the undertaking so submitted was found to be incorrect in the next inspection, their deposit with the MCI, which was around Rs.10 crores, would be forfeited by way of penalty. The writ petitions and appeals arising from special leave petitions in Category III stand disposed of in such terms. [Paras 30 and 18]

#### Case Law Reference

	2005 (1) SCR 380	referred to.	Para 11
D	2011 (2) SCR 945	relied on.	Para 12
	2012 (5) SCR 768	referred to.	Para 13
	2002 (2) Suppl. SCR 228	referred to.	Para 14
E	2013 (14) SCR 105	relied on.	Para 20

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 705 of 2014

F Under Article 32 of the Constitution of India.

WITH

G W.P. (C) NOS. 700, 707, 784, 862, 523, 799 AND 819 OF 2014,  
AND

H C.A. NOS. 6481, 6482, 6483, 6484, 6485, 6486, 6488-6489, 6492, 6493-94, 6509, 6495, 6496, 6497, 6498, 6499-6500, 6503-6504, 6505-6506, 6507-6508, 6501-6502 OF

2015.

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SLP (C) NOS. 22785, 27034 OF 2014

TRANSFER PETITION (C) NO. 1217 OF 2014

Pinky Anand, ASG, Kapil Sibal, Dr. Rajeev Dhawan, Nidhesh Gupta, Harin Rawal, Vikas Singh, Shashi Kiran Shetty, Harin P. Raval, S. Guru Krishna Kumar, P.V. Shetty, K.S. Shetty, Irshad Ahmad, AAG, Bina Madhavan, Praseena Elizabeth Joseph, Akanksha Mehra, (For Lawyer's Knit & Co.), V. Balaji, Rakesh K. Sharma, Vijay Kumar, Amit Kumar, Ramesh Allanki, Ankit Rajgarhia, Shaurya Sahai, Rekha Bakshi, Sanjay Bhatt, Dushyant Kumar, Rabin Majumder, Zulfiker Ali P.S., Ashish Kumar, Ravinder Katna, Neeraj Shekhar, J.S. Bhasin, Pankaj Kumar, Prasanth P., Anurag Sharma, Joseph Pookkatt, (For AP & J Chambers), Anil Kumar Tandale, Madhurima Tatia, Ramesh Allanki, Tatini Basu, Avadesh Chaudhary, Amit Jaiswal, Jatin Zaveri, Neel Kamal Mishra, Atul Sharma, C., Kannan, Rakesh K. Sharma, Anup Kumar, N. Ganpathy, Gaurav Sharma, Amandeep Kaur, Prateek Bhatia, Deepieka Kalia, Kapish Seth, R. K. Rathore, Rekha Pandey, Sunita Sharma, M. Khairati, D.S. Mahra, Aditya Singla, Supriya Juneja, Priya Puri, Tarun Gupta, R.D. Upadhyay, G Prabhakar, R.K. Adsure, Farah Fatima, Kush Chaturvedi, Raghavendra S. Srivatsa, Amit A. Pai, Abhish Kumar, Som Raj Chaudhary, Archana Singh, Rohit Bhat, Onkar, Kush Chaturvedi, Balaji Srinivasan, Venkatesh Mahadevan, Srishti Govil, Vaishnavi S., Sharan Thakur, Vijay Kumar Paradeshi, Ramesh Babu M.R., P. Venkat Reddy, (For Venkat Palwai Law Associates), Ashok Panigrahi, Milind Kumar, Shibashish Misra, Sanjeeb Panigrahi, Devvrat, Ranbir Yadav, L.R. Singh, T. Harish Kumar, B. Ramanamurthy, K. Sharda Devi, Anil Kumar Mishra, Sudhanshu S. Chaudhari, Vinod K. Tewari and Neeraj Shekhar, for the appearing parties.

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A The Judgment of the Court was delivered by

**UDAY UMESH LALIT J.** 1. These petitions (except SLP(C) Nos.22785 of 2014 and 27034 of 2014) arise out of communications issued by the Central Government recommending disapproval of applications preferred in respect of Medical Colleges of the applicants for the academic year 2014-2015. In these petitions, after conducting inspection of the respective Medical Colleges the Medical Council of India (MCI for short) had found infirmities or inadequacies in the infrastructure, facilities and faculty. The respective applicants then claimed that they had rectified the shortcomings and asked for compliance verification. But the Central Government and/or the MCI refused to undertake any fresh inspection for verification, for want of adequate time. This being the common feature in all these petitions, they were heard together and are being disposed by this common judgment.

2. Broadly the categories of Medical Colleges presently before the Court are:-

- E (I) Cases where new Medical Colleges are sought to be established for the first time and where such colleges are seeking appropriate permission to admit students to the first year of MBBS course namely:-
- F (1) WP(C) No.700/2014, (2) WP(C) No.705/2014.
- (3) WP(C) No.819/2014 (4) SLP(C) No.22757/2014
- (5) SLP(C) No.22756/2014 (6) SLP(C) No. 24913/2014
- G (7) SLP (C) No. 23512/2014. The Respondent in this petition has also preferred Transfer Petition (C) No.1217 of 2014 to have his writ petition pending in the High Court of Bombay to be transferred to this Court.
- H (II) Cases where the existing approved Medical Colleges

are seeking increase in intake of seats for admissions of students to the first year of MBBS Course namely: A

(1) WP(C) No.523/2014 (2) WP(C) No.707/2014

(3) WP(C) No.862/2014. B

(III) Medical Colleges seeking renewal of permission, who have already received permission in the previous year(s) either for establishing new Medical College or for increasing intake capacity of the existing Medical College. In this category of cases, the renewal for subsequent batches and for permission to admit students to the first year course is sought namely: C

(1) WP(C) No.784/2014 (2) WP(C) No.799/2014

(3) SLP(C) No.21517/2014 (4) SLP(C) No.21765/2014 D

(5) SLP(C) No.22755/2014 (6) SLP(C) No.26758-59/2014

(7) SLP(C) No.23476/2014 (8) SLP(C) No.23528-29/2014 E

(9) SLP(C) No.24154/2014 (10) SLP(C) Nos.24150-51/2014

(11) SLP(C) No.24665/2014 (12) SLP(C) No.24754-55/2014 F

(13) SLP(C) No.25763/2014 (14) SLP(C) No. 25468-69/2014 G

(15) SLP(C) No.22974 /2014 (16) SLP(C) Nos.26296-97 /2014

and (17) SLP(C) Nos.26768-69/2014. H

A 3. Reduction in seats in a Dental College is challenged in  
Special Leave Petition (C) No.22785 of 2014. This being a  
completely distinct matter, is de-tagged and it be listed before  
an appropriate Bench. Further SLP(C) No.27034 of 2014 is  
B 23.09.2014 about 76 seats were lying vacant in different col-  
leges in Jharkhand. No separate orders are called for in this  
petition and it be taken to be disposed of in the light of our  
discussion hereinafter.

C **STATUTORY PROVISIONS**

4. The statutory provisions concerning permission for es-  
tablishment of new Medical College and for increase in in-  
take are to be found in Section 10A of the Indian Medical Coun-  
D cil Act, 1956 (hereinafter referred to as the Act) and the Regu-  
lations framed under the Act. Said Section 10A is as under:-

E **"10A. PERMISSION FOR ESTABLISHMENT OF NEW  
MEDICAL COLLEGE, NEW COURSE OF STUDY  
ETC.**

1. Notwithstanding anything contained in this Act or any  
other law for the time being in force:-

F (a) no person shall establish a medical college

(b) no medical college shall:-

G (i) open a new or higher course of study or training (in-  
cluding a postgraduate course of study or training) which  
would enable a student of such course or training to qualify  
himself for the award of any recognised medical qualifi-  
cation; or

H (ii) increase its admission capacity in any course of study  
or training (including a postgraduate course of study or

training),

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except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

**Explanation 1** - For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

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**Explanation 2** - For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

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2. (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a Scheme in accordance with the provisions of clause (b) and the Central Government shall refer the Scheme to the Council for its recommendations.

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(b). The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

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3. On receipt of a Scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may -

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(a) if the Scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written rep-

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A       resentation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council.

B       (b) consider the Scheme, having regard to the factors referred to in sub-section (7) and submit the Scheme together with its recommendations thereon to the Central Government.

C       4. The Central Govt. may after considering the Scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the Scheme, and any such approval shall be a permission under sub-section (1):

E       Provided that no Scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard;

F       Provided further that nothing in this sub section shall prevent any person or medical college whose Scheme has not been approved by the Central Government to submit a fresh Scheme and the provisions of this section shall apply to such Scheme, as if such Scheme has been submitted for the first time under sub-section (1).

G       5. Where, within a period of one year from the date of submission of the Scheme to the Central Government under sub-section (1), no order passed by the Central Government has been communicated to the person or college submitting the Scheme, such Scheme shall be deemed to have been approved by the Central Govern-

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ment in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted. A

6. In computing the time-limit specified in sub-section (5), the time taken by the person or college concerned submitting the Scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded. B

7. The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the Scheme under sub-section (4), shall have due regard to the following factors, namely:- C D

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be under section 20 in the case of postgraduate medical education. E

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources; F

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the Scheme. G H

A (d) whether adequate hospital facilities, having regard to  
the number of students likely to attend such medical col-  
lege or course of study or training or as a result of the  
increased admission capacity, have been provided or  
would be provided within the time-limit specified in the  
B Scheme;

(e) whether any arrangement has been made or  
programme drawn to impart proper training to students  
likely to attend such medical college or course of study or  
C training by persons having the recognised medical quali-  
fications;

(f) the requirement of manpower in the field of practice of  
D medicine;

(g) and any other factors as may be prescribed.

8. Where the Central Government passes an order either  
approving or disapproving a Scheme under this section,  
a copy of the order shall be communicated to the person  
E or college concerned."

5. Section 10A contemplates submission of a Scheme  
to the Central Government in prescribed form, which Scheme  
is then to be referred by the Central Government to the MCI for  
F its appropriate recommendations. The Scheme is to be con-  
sidered having regard to the features referred to in Sub-Sec-  
tion 7 and is then placed before the Central Government along  
with the recommendations of the MCI. In exercise of powers  
conferred by Section 10A read with Section 33 of the Act, the  
G MCI with the previous sanction of the Central Government has  
made "Establishment of the Medical College Regulations,  
1999" (hereinafter referred to as the Regulations) which were  
published in the Gazette of India on 28.8.1999. Paragraph 3  
H of the Regulations lays down that no person shall establish a

medical college except after obtaining prior permission of the Central Government by submitting a Scheme. The Regulations then deal with the Scheme in extenso. Clauses 1 and 2 of the Scheme deal with 'Eligibility Criteria' and 'Qualifying Criteria' respectively. Clause 3 then sets out certain requirement in Parts (i), (ii) and (iii) concerning various details about the status of the applicant in terms of the eligibility criteria, name and address of the Medical College including various facets of the infrastructure and planning and the details of the existing hospital including availability of various facilities and capacities as also upgradation and expansion programme.

6. Paragraph 7 of the Regulations deals with report of the MCI while Para 8 deals with grant of permission by the Central Government. Paragraphs 7 and 8 of the Regulations are as under:-

**"7. REPORT OF THE MEDICAL COUNCIL OF INDIA:**

(a) After examining the application and after conducting necessary physical inspections, the Medical Council shall send to the Central Government a factual report stating –

1. that the applicant fulfils the eligibility and qualifying criteria.

2. that the person has a feasible and time bound programme to set up the proposed medical college alongwith required infrastructural facilities including adequate hostels facilities separate for boys and girls, and as prescribed by the Council, commensurate with the proposed intake of students, so as to complete the medical college within a period of four years from the date of grant of permission;

3. that the person has a feasible and time bound expansion

A programme to provide additional beds and infrastructural facilities, as prescribed by the Medical Council of India, by way of upgradation of the existing hospital or by way of establishment of new hospital or both and further that the existing hospital as adequate clinical material for starting 1st year course.

B 4. that the person has the necessary managerial and financial capabilities to establish and maintain the proposed medical college and its ancillary facilities including a teaching hospital.

C 5. that the applicant has a feasible and time bound programme for recruitment of faculty and staff as per prescribed norms of the Council and that the necessary posts stand created.

D 6. that the applicant has appointed staff for the 1st year as per MCI norms.

E 7. that the applicant has not admitted any students.

8. Deficiencies, if any, in the infrastructure or faculty shall be pointed out indicating whether these are remediable or not.

F (b) The recommendation of the Council whether Letter of Intent should be issued and if so, the number of seats per academic year should also be recommended. The Council shall recommend a time bound programme for the establishment of the medical college and expansion of the hospital facilities. This recommendation will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The recommendation will also define annual targets to be achieved by the person

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to commensurate with the intake of students during the following years. A

(c) Where the Council recommends for not issuing of Letter of Intent, it shall furnish to the Central Government:

(i) its reasons for not granting the Central Government permission; and (ii) documents/facts on the basis of which the Council recommends the disapproval of the Scheme. B

(d) The recommendation of the Council shall be in Form-4. C

### RECONSIDERATION

Wherever the Council in its report has not recommended the issue of Letter of Intent to the person, it may upon being so required by the Central Government reconsider the application and take into account new or additional information as may be forwarded by the Central Government. The Council shall, thereafter, submit its report in the same manner as prescribed for the initial report. D

### 8. GRANT OF PERMISSION:

(1) The Central Government on the recommendation of the Council may issue a Letter of Intent to set up a new medical college with such conditions or modifications in the original proposal as may be considered necessary. This letter of Intent will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The formal permission may be granted after the above conditions and modifications are accepted and the performance bank guarantees for the required sums are furnished by the person and after consulting the Medical Council of India. E F G H

A (2) The formal permission may include a time bound  
programme for the establishment of the medical college  
and expansion of the hospital facilities. The permission  
may also define annual targets as may be fixed by the  
Council to be achieved by the person to commensurate  
B with the intake of students during the following years.

(3) The permission to establish a medical college and  
admit students may be granted initially for a period of one  
year and may be renewed on yearly basis subject to veri-  
C fication of the achievements of annual targets. It shall be  
the responsibility of the person to apply to the Medical  
Council of India for purpose of renewal six months prior to  
the expiry of the initial permission. This process of renewal  
of permission will continue till such time the establishment  
D of the medical college and expansion of the hospital fa-  
cilities are completed and a formal recognition of the medi-  
cal college is granted. Further admissions shall not be  
made at any stage unless the requirements of the Council  
are fulfilled. The Central Government may at any stage  
E convey the deficiencies to the applicant and provide him  
an opportunity and time to rectify the deficiencies.

(4) The council may obtain any other information from the  
proposed medical college as it deems fit and necessary.”  
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7. Paragraph 8 of the Regulations states that permission  
to establish new Medical College may be granted initially for a  
period of one year and would be renewed on yearly basis sub-  
ject to verification of the achievements of annual targets. The  
G process of renewal of permission continues till such time that  
the establishment of the Medical College and expansion of  
hospital facilities are completed and formal recognition is  
granted to the Medical College. A Medical College which gets  
initial permission to establish and admit first batch of students  
H will thus be required to seek renewal till such time that it gets

formal recognition and the students admitted in the first batch are ready to pass out and secure recognized medical qualification. This process thus continues for five years and Category No. III as stated herein above are cases of such Medical Colleges. A

8. The Schedule to the Regulations sets out various stages dealing with processing of applications preferred by the Medical Colleges and how the matter is to be dealt with at various stages. This schedule has undergone changes over a period of time. The schedule as it existed originally was as under:- B  
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**“SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA** D

Sl. No	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	From 1 <sup>st</sup> August to 31 <sup>st</sup> August (both days inclusive) of any year
2.	Receipt of applications by MCI from the Central Government	30 <sup>th</sup> September
3.	Recommendations of the Medical Council of India to the Central Government for issue of letter of intent	31 <sup>st</sup> December
4.	Issue of letter of intent by the Central Government	31 <sup>st</sup> January
5.	Receipt of reply from the applicant by the Central Government requesting for letter of permission	28 <sup>th</sup> February
6.	Receipt of letter from the Central Government by the Medical Council of India for consideration for issue of letter of permission	15 <sup>th</sup> March
7.	Recommendations of the Medical Council of India to the Central Government for issue of letter of permission	15 <sup>th</sup> June
8.	Issue of letter of permission by the Central Government	15 <sup>th</sup> July

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A *Note.—(1)* The information given by the applicant in Part  
 I of the application for setting up a medical college that is  
 information regarding organisation, basic infrastructural  
 facilities, managerial and financial capabilities of the ap-  
 plicant shall be scrutinised by the Medical Council of In-  
 B dia through an inspection and thereafter the Council may  
 recommend issue of letter of intent by the Central Gov-  
 ernment.

(2) Renewal of permission shall not be granted to a medi-  
 C cal college if the above schedule for opening a medical  
 college is not adhered to and admissions shall not be  
 made without prior approval of the Central Government.”

9. After the amendment vide Notification published on  
 D 28.08.2009 the Schedule underwent some modifications  
 namely, as against serial numbers 3, 4, 5, 6, 7 and 8 the dates  
 as modified were; 15<sup>th</sup> December, 15<sup>th</sup> January, 15<sup>th</sup> February,  
 1<sup>st</sup> March, 15<sup>th</sup> May and 15<sup>th</sup> June respectively. Notes 1 and 2  
 were not modified at all and continued to remain as they were.

E 10. The Regulations were further amended by Amend-  
 ment Notification dated 21.09.2012 which was published in  
 the Gazette of India on 1.10.2012. It substituted the Schedule  
 and added a Note. The relevant portion of the Notification is  
 F as under:-

“1. (i) These Regulations may be called the “Establish-  
 ment of Medical College Regulations, (Amendment),  
 2012:

G (ii) They shall come into force from the date of their publi-  
 cation in the Official Gazette” .....

6. In the “ESTABLISHMENT OF MEDICAL COLLEGE  
 REGULATIONS, 1999”, in “SCHEDULE FOR RECEIPT  
 H OF APPLICATION FOR ESTABLISHMENT OF NEW

ROYAL MEDICAL TRUST (REGD) v. UNION OF INDIA 551  
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MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA", the following shall be substituted as under:-

SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE MEDICAL COUNCIL OF INDIA.

Sl. No..	Stage of processing	Last Date
1	Receipt of applications by the Council	From 1 <sup>st</sup> August to 31 <sup>st</sup> August (both days inclusive) of any year
2	Issue of Letter of Intent by the Council	30 <sup>th</sup> April
3	Receipt of reply from the applicant by the Council for consideration for issue of Letter of Permission	31 <sup>st</sup> May
4	Issue of Letter of Permission by the Council	15 <sup>th</sup> June

Note : The time schedule indicated above may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications.

Note.—(1) The information given by the applicant in Part I of the application for setting up a medical college that is information regarding organisation, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinised by the Medical Council of India through an inspection and thereafter the Council may recommend issue of letter of intent by the Central Government.

A (2) Renewal of permission shall not be granted to a medical college if the above schedule for opening a medical college is not adhered to and admissions shall not be made without prior approval of the Central Government.”

B **EARLIER DECISIONS OF THIS COURT**

C 11. The schedule to the Regulations, the stages mentioned therein regarding processing of applications and the requirement to adhere to the dates specified therein, were considered by this Court in some cases. In *Mridul Dhar v. Union of India*<sup>1</sup> this Court was primarily concerned with matters giving full effect to 15% All India Quota seats available in all medical colleges run by the Union of India or the State Government or Municipal or other local authorities by strictly adhering to the time schedule. While so considering, this Court in para 28 D quoted the Schedule as it existed then, namely, the one referred to in paragraph 8 hereinabove. In paragraph 35 this Court issued certain directions and direction Nos. 14 and 15 were to the following effect:

E “14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

F 15. Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with.”

G 12. In *Priyadarshini Dental College and Hospital v. Union of India and others*<sup>2</sup> this Court was called upon to consider the implications of similar such Schedule annexed to the Regulations of Dental Council of India. The statutory

<sup>1</sup> (2005) 2 SCC 65

H <sup>2</sup> (2011) 4 SCC 623

provisions and the Regulations under the Dentists Act, 1948 are *pari materia* with those in the present case. Note No.2 below the Schedule to the Regulations of Dental Council of India enables the Central Government, for reasons to be recorded in writing, to modify the Schedule in respect of any class or category of applications. In this backdrop paragraph Nos.19 and 20 of the decision in *Priyadarshini* are reproduced hereunder:

“19. Regulation 11(2) clearly lays down a time schedule for the submission of applications for renewal of permission (six months prior to the expiry of the current academic session), for recommendation by DCI (15th June) and for issue of final orders by the Central Government regarding renewal of permission (15th July). Though, the DCI Regulations provide that the last date for issue of letter of permission or renewal of permission by the Central Government is 15th July, having regard to the scheme relating to grant of renewal of permission and Note 2 to the Schedule, the Central Government has the discretion to modify the time schedule in appropriate cases, for reasons to be recorded, in respect of any class or category of applications.

20. If the Central Government was of the view that a dental college deserved renewal of permission in accordance with the Act and the Regulations, it should grant such permission. If it was of the view that the dental college did not deserve renewal of permission, it should refuse the permission. If the Central Government felt that the last date for granting renewal of permission was over and there was no justification for extending the time schedule, it could refuse the renewal of permission on that ground. On the other hand, if the Central Government was of the view that the applicant College had complied with the requirements

A and was not at fault, and it was not responsible in any  
manner for the delay in considering the application, and  
there were other applicants of similar nature, it could have  
recorded those reasons in writing and extended the time  
schedule for that category of applicants and then granted  
B the renewal of permission, provided the last date for  
admissions had not expired. Note 2 to the Schedule to  
the DCI Regulations enables the Central Government to  
modify the time schedule, for reasons to be recorded in  
writing, in respect of any class or category of applications.  
C The applicants for renewal of permission for the fourth or  
fifth year, where there is compliance with the requirements  
relating to infrastructure, equipment and faculty, could be  
such a class or category of applications. Similarly,  
D applications where the High Courts have directed  
consideration beyond 15th July in view of special  
circumstances can also constitute a class or category of  
applicants.”

E During the course of its Judgment in *Priyadarshini* under  
caption “A Suggestion for modification of time Schedule” this  
Court in paragraphs 23 to 25 observed as under:

F “23. In all these cases, the petitioners, who were the  
applicants for renewal were existing dental colleges, which  
were functioning for three or four years and each college  
had admitted hundreds of students either directly or  
through the State Government allotment. The colleges had  
the benefit of initial permission and several renewals of  
permission. Refusal of renewal of permission in such  
G cases should not be abrupt nor for insignificant or technical  
violations. Nor should such applications be dealt in a  
casual manner, by either granting less than a week for  
setting right the “deficiencies” or not granting an effective  
H hearing before refusal. The entire process of verification

and inspection relating to renewal of permission, should A  
be done well in time so that such existing colleges have  
adequate and reasonable time to set right the deficiencies  
or offer explanations to the deficiencies. The object of  
providing for annual renewal of permissions for four years,  
is to ensure that the infrastructural and faculty B  
requirements are fulfilled in a gradual manner, and not to  
cause disruption.

24. In the context of what has happened in these cases, C  
it is necessary to emphasise the distinction between the  
applications for fresh permissions and applications for  
renewal of permissions. They require distinct time  
schedules. The process of decision-making under the  
Regulations, for grant of fresh or initial permission for D  
establishment of new dental colleges is exhaustive and  
elaborate, when compared to the process of decision-  
making in regard to grant of renewal of permission for the  
four subsequent years. Before grant of initial grant of  
permission, the DCI and the Central Government are  
required to consider the following aspects: whether the E  
institution would be in a position to offer the minimum  
standards of dental education in conformity with the Act  
and the Regulations; whether the institution has adequate  
resources; whether the institution has provided or will F  
provide within the time-limit specified in the scheme,  
necessary staff, equipment, accommodation, training and  
other facilities to ensure proper functioning of the institution;  
whether the institution has provided or would provide within  
the time-limit specified in the scheme, adequate hospital G  
facilities; whether faculty having recognised dental  
qualifications and personnel in the field of practice of  
dentistry will be available to impart proper training to the  
students; and whether other factors prescribed by the  
Regulations have been complied. On the other hand, for H

A the purpose of grant of renewal of permission, DCI has to make recommendations by considering only whether the prescribed faculty and infrastructure are available.

B **25.** The need for renewal of permission emanates from the fact that a newly established college is not required to have in place, full complement of the teaching faculty and complete infrastructure in the first year itself. This is because, during the first year, the college will be catering only to a limited number of first year students. During the  
C second, third and fourth and fifth years, the student strength will increase. If the permitted intake is 100, usually there will be 100 students in the first year, 200 students in the second year, 300 students in the third year, 400 students in the fourth year and 500 students in the fifth year.  
D Thereafter, the strength may remain constant. As the strength increases gradually every year, correspondingly the infrastructure and faculty will have to be increased.”

E **13.** In a subsequent decision in *Priya Gupta v. State of Chhattisgarh and others*<sup>3</sup> this Court in paragraph 32 reproduced the Schedule and the Notes thereunder as referred to in *Mridul Dhar* and in paragraph 40 it was stated thus:

F **“40.** The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It  
G is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the

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H <sup>3</sup> (2012) 7 SCC 433

selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.”

The relevant directions issued in *Priya Gupta* by this Court in paragraphs 46.1 46.3. 46.4. 47, 47.1 and 47.5 were as under:

“**46.1.** The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

**46.3.** After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counselling, in accordance with the Rules.

**46.4.** Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not be included in the counselling to be conducted by the authority concerned and that college would have no right to make admissions in the current academic year against such seats.

**47.** All these directions shall be complied with by all concerned, including the Union of India, Medical Council

A of India, Dental Council of India, State Governments,  
universities and medical and dental colleges and the  
management of the respective universities or dental and  
medical colleges. Any default in compliance with these  
conditions or attempt to overreach these directions shall,  
B without fail, invite the following consequences and penal  
actions:

C **47.1.** Every body, officer or authority who disobeys or  
avoids or fails to strictly comply with these directions  
*stricto sensu* shall be liable for action under the  
provisions of the Contempt of Courts Act. Liberty is  
granted to any interested party to take out the contempt  
proceedings before the High Court having jurisdiction  
over such institution/State, etc.

D **47.5.** The college which grants admission for the current  
academic year, where its recognition/approval is granted  
subsequent to 15th July of the current academic year, shall  
be liable for withdrawal of recognition/approval on this  
E ground, in addition to being liable to indemnify such  
students who are denied admission or who are wrongfully  
given admission in the college.”

It may be mentioned here that the Schedule as it stood  
F then, when this Court rendered its Judgment in *Priya Gupta*  
did not enable the Central Government to modify the  
schedule, as was permissible under the concerned Dental  
Council of India Regulations considered by this Court in  
*Priyadarshini*. On and with effect from 01.10.2012 i.e. after  
G the Judgment in *Priya Gupta*, the substituted Schedule now  
empowers the Central Government to that effect.

H 14. It may further be mentioned that while considering the  
provisions of the Act and the Medical Council of India  
Regulations on Graduate Medical Education, 1997, this Court

in *Medical Council of India vs. Madhu Singh*<sup>4</sup> in para 23 A  
had directed inter alia:-

“(i) There is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;

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.....

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

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.....

.....

(vi) no variation of the schedule so far as admissions are concerned shall be allowed;

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(vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.”

### THE PRESENT CASES

15. In the instant cases, during inspections conducted by the MCI in respect of Medical Colleges falling in Categories I, II and III as stated above, certain deficiencies were found which were then communicated to the concerned applicants. According to the concerned applicants, either the deficiencies were wrongly noted or they had since then been rectified and compliance was reported. Though compliance was so reported and the Central Government / the MCI were asked to have inspection to verify such compliance, the Central

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<sup>4</sup> (2002) 7 SCC 258

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**A** Government communicated its disapproval without taking any steps to assess or verify the compliance report. By way of illustration we may set out relevant facts in Writ Petition (C) No.705 of 2014 which are as under:-

**B** (a) The scheme under Section 10A of the Act for establishing a new medical college by the applicant was placed before the Scrutiny Committee of the MCI on 22.01.2014. The deficiencies in certain documents pertaining to land and finance having been pointed out, **C** the concerned documents were furnished by the applicant on 07.02.2014. The matter was then placed before the Executive Committee of the MCI on 14.03.2014 which decided to accept the application subject to compliance of certain requirements. These were complied with by **D** the applicant on 14.04.2014.

(b) A surprise inspection was undertaken on 26.05.2014 and 27.05.2014 in which certain deficiencies in infrastructure, faculty and clinical material were found. **E** Considering these deficiencies to be serious, the Executive Committee of the MCI decided to disapprove the application and the decision was so communicated to the Central Government on 14.06.2014.

**F** (c) On 26.06.2014 the applicant reported compliance and submitted that the deficiencies stood removed. A Committee appointed by the Central Government to grant personal hearing to all such colleges where negative recommendations were given by the MCI, granted **G** personal hearing to the applicant and forwarded compliance report dated 26.06.2014 for verification and appropriate action.

**H** (d) The Executive Committee of the MCI however in its communication dated 10.07.2014 stated that no

compliance/verification could be undertaken for the academic year 2014-15. Thereafter Central Government vide its letter dated 15.07.2015 disapproved the scheme submitted by the applicant in view of the inability of the MCI to assess/verify the compliance. A

(e) In the circumstances the applicant filed Writ Petition (C) No.705 of 2014 in this Court submitting, *inter alia*, that the inspection was conducted almost after eight months thereby pushing the matter to such levels where it became impossible for the MCI to assess the compliance report and that the MCI ought to have paced itself in accordance with mandatory time schedule so that all the stages could possibly and effectively be undertaken before the dead line mentioned in the Schedule. B C

(f) In reply it was submitted by the MCI that every applicant submitting a scheme is obliged to fulfill minimum norms as on the date of application but generally such applicants request for postponement of inspection so that they get additional time to put their house in order. Resultantly the inspection teams appointed by it are under tremendous workload in and around April/May. It further submitted that it had obtained legal opinion to the effect that in view of the decision in *Priya Gupta* it was impermissible to undertake any inspection after 15<sup>th</sup> of June and as such no verification of compliance report could be undertaken. D E F

16. The facts mentioned above as obtaining in Writ Petition (C) No.705 of 2014 are illustrative and the fact situation so also the submissions in the other matters are more or less identical and the communications of disapproval by the Central Government in concerned cases were also on the same date i.e. on 15.07.2014. In most of the matters the applicants approached this Court under Article 32 of the Constitution of India while in some cases they went to the High G H

- A Court. In certain cases the High Court directed the Central Government and the MCI to undertake fresh inspection. These orders, at the instance of the MCI are under challenge, in which this Court suspended the operation of directions so issued by the High Court. In some cases the High Court did not grant
- B any interim relief and the applicants have preferred special leave petitions challenging the correctness of such refusal.

### INTERIM DIRECTIONS

- C 17. During the course of hearing, an affidavit was filed on behalf of the Union of India on 18.09.2014 stating inter alia,

(i) The total intake capacity of MBBS seats in the country increased from 51598 in 2013-2014 to 54348 in 2014-2015. However renewal of seats was not permitted in case of 3920 seats in 2014-2015 and as such there was a net loss of 1170 MBBS seats in 2014-2015.

(ii) The MCI had recommended for disapproval of renewal in case of 8667 seats. However renewal permission in case of 4747 MBBS seats in 73 Government Medical Colleges was granted by the Central Government on the last day i.e. 15.07.2014, by relying on the undertaking/compliance given by respective State Governments.

(iii) The Central Government issued disapproval letters to 46 Medical Colleges including 41 Private Medical Colleges with 3685 MBBS seats and 5 Government Medical Colleges with 235 seats for the year 2014-2015.

- G 18. Since the deadline for effecting admission as per Medical Council of India Regulations on Graduate Medical Education, 1997 namely 30.09.2014 was approaching and large number of seats were involved because of recommendations for disapproval without having assessed or
- H verified compliance as reported by the applicants, the matters

were considered for grant of suitable relief. The Medical A  
Colleges in Category III as mentioned above alone were  
considered fit to be granted such relief as they were all renewal  
cases. All these Medical Colleges had received permission  
to set up and/or to increase the intake in previous year(s). The  
cases in Category III being renewal cases were considered B  
differently as against other cases in the light of the law laid  
down in *Priyadarshini*. This Court therefore by orders dated  
18.09.2014 and 25.09.2014 permitted all the medical colleges  
falling in category No.III to give fresh admissions in the first C  
year of the M.B.B.S. Course subject to certain conditions  
mentioned in those orders. The Medical Colleges in that  
category were required to file an undertaking on same terms  
as Government Medical Colleges that there was no deficiency D  
and that if the undertaking so submitted was found to be  
incorrect in the next inspection, their deposit with the MCI,  
which was around Rs.10 crores, would be forfeited by way of  
penalty. It was further directed that admissions could be given E  
to only those students from the merit list prepared by the  
respective States and that the students would be charged fees  
prescribed by the Government Medical Colleges of the  
respective States. These orders were passed as the  
concerned medical colleges had already received permission  
to establish new medical college or to increase the intake F  
capacity and the matters in issue were only concerning renewal  
permissions and as the concerned colleges had statedly  
removed deficiencies and submitted their compliance reports.

### SUBMISSIONS

19. The matters were thereafter taken up for hearing. By G  
this time the dead line for effecting admissions for the  
academic year 2014-15 was over. The learned counsel  
appearing for various applicants as well as the counsel  
appearing for the Union of India and the Medical Council of  
India were heard on the Statutory Scheme as well as H

A parameters to be considered at various stages, time schedule in the Regulations and the requirement to adhere to such time schedule. We heard Mr. Kapil Sibal, Dr. Rajeev Dhavan, Mr. Vishwanath Shetty, Mr. Mohan Parasaran and Mr. Nidhesh Gupta, learned Senior Counsel appearing for various  
B applicants, Mr. Vikas Singh, learned counsel for MCI and Ms. Pinky Anand, learned Additional Solicitor General for the Union of India. We must record our sincere appreciation for the assistance rendered by the learned Counsel.

C 20. It was submitted on behalf of the applicants that:

(a) Section 10A of the Act read with the Regulations and the Scheme framed thereunder contemplates certain initial pre-requisites such as Essentiality Certificate, Consent  
D of Affiliation, a suitable plot of land as prescribed and a three hundred bed hospital with necessary infrastructure and facilities. If these qualifying pre-requisites are not met, the permission to establish a medical college will certainly not be granted. However, in none of the present cases,  
E the denial or disapproval was on account of inability to meet these qualifying pre-requisites.

(b) According to sub-section (7) of Section 10A, the Scheme and the Regulations, certain requirements like  
F necessary facilities in respect of staff, equipment, accommodation, training as well as hospital facilities could be provided within the time limit specified in the Scheme. Unlike the qualifying pre-requisites as stated earlier, these facilities could be put in place and made  
G effective at a later point of time.

(c) Reading of sub-sections (3), (4) and (8) of Section  
H 10A read with Clauses 7 and 8 of the Regulations as well as the underlying idea behind sub-section (7) of Section 10A would show that the concerned applicant ought to be

afforded time and sufficient opportunity to rectify the deficiencies. Reliance was placed on the decision of this Court in *Swamy Devi Dayal Hospital & Dental College vs. Union of India*.<sup>5</sup> A

(d) The compliance having been reported, the MCI and the Central Government were obliged to assess whether such deficiencies stood removed or not. Inability of the MCI to perform its statutory obligation and initiate appropriate action within the time frame has penalized the respective colleges for no fault of theirs. B C

(e) The MCI and the Central Government must arrange their affairs in such a way that the respective stages in the Schedule are adhered to, affording reasonable opportunity to the concerned medical colleges to rectify the deficiencies. Having pushed the concerned colleges close to the dead line, the MCI and the Central Government cannot then take refuge under the Schedule and project their inability to carry out any compliance verification. D E

(f) The Note under the Schedule to the regulations, as brought in by Amendment Notification dated 21.9.2012 sufficiently enabled the Central Government to modify the time schedule, as laid down by this Court in *Priyadarshini*. The Central Government did make an exception and modified the time limits in the Schedule in favour of Government medical colleges. Similar such benefit ought to have been extended in favour of the private Medical Colleges as well. F G

21. Mr. Vikas Singh, learned Senior Advocate submitted that the Scheme contemplated that the concerned applicants must have the necessary facilities, faculty and infrastructure in

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<sup>5</sup> (2014) 13 SCC 506

A existence and operational as on the day the application was made. He submitted that most of the applicants themselves would request the MCI to conduct inspections as late as possible, which would give additional time to the concerned applicants to put the facilities in order. In these circumstances,

B the inspections were carried out in the months of April and May. In his submission, because of mandatory directions in *Priya Gupta*, the MCI refused to undertake any inspection for compliance verification. He however fairly accepted that in view

C of sub section (4) of Section 10 A of the Act, before any disapproval of Scheme was recorded, reasonable opportunity ought to have been given and that such opportunity is available even in Renewal Cases in Category III. During the course of submissions he submitted Draft Schedules, one pertaining to applications for Establishment of new Medical Colleges and increase of admission capacity while the other relating to cases of Renewal of Permission in an existing Medical College. Those Draft Schedules are set out hereunder:-

E SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND INCREASE OF ADMISSION CAPACITY IN AN EXISTING MEDICAL COLLEGE AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA.

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	Stage of processing	Last date
G	1. Receipt of applications by the Central Government and Submission of Standard Assessment Form, Declaration Forms of the Faculty members and Resident Doctors & other documents by the applicant to the MCI.	From 1 <sup>st</sup> August to 31 <sup>st</sup> August (both days inclusive) of any year.
	2. Receipt of applications by MCI from the Central Government.	30 <sup>th</sup> September
	3. Technical Scrutiny of the applications by the MCI.	31 <sup>st</sup> October
H	4. Return of defective/incomplete applications by MCI to the Central Government	30 <sup>th</sup> November

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5.	Physical assessment of the applicant medical colleges & communication of deficiencies to the medical colleges and to the Central Government.	31 <sup>st</sup> January.	A
6.	Hearing by the Central Government Under section 10A(4).	1 <sup>st</sup> to 20 <sup>th</sup> February	
7.	Forwarding of Representation/ Compliances by the Central Government to the MCI in cases where compliance verification is required.	28 <sup>th</sup> February	B
8.	Compliance Verification assessment by the MCI.	30 <sup>th</sup> April	
9.	Recommendations of the MCI to the Central Government for issuance of letter of permission/disapproval of the application.	15 <sup>th</sup> May	C
10.	Issue of letter of permission by the Central Government.	15 <sup>th</sup> June.	

**SCHEDULE IN THE CASES OF RENEWAL OF PERMISSION IN AN EXISTING MEDICAL COLLEGE BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA.**

	Stage of processing	Last date	
1.	Submission of Standard Assessment Forms, Declaration Forms of the Faculty Members and Resident Doctors & Other Documents by the medical college to the MCI.	30 <sup>th</sup> September	E
2.	Physical assessment of the medical colleges & communication of deficiencies to the medical college and to the Central Government	31 <sup>st</sup> January	
3.	Hearing by the Central Government Under Section 10A(4)	1 <sup>st</sup> to 20 <sup>th</sup> February	F
4.	Forwarding of Representation/Compliances by the Central Government to the MCI in cases where compliance verification is required.	28 <sup>th</sup> February	
5.	Compliance verification assessment by the MCI & Recommendations of the MCI to the Central Government for issuance of letter of permission/or not to grant renewal of permission.	15 <sup>th</sup> May	G
6.	Issue of letter of permission by the Central Government	15 <sup>th</sup> June	

**DISCUSSION**

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A 22. We grant special leave to appeal in all the matters in categories I and III.

B 23. While considering the Scheme under Section 10A of the Act, the MCI and the Central Government are required to have due regard to the factors referred to in sub-section (7) thereof. If the initial Scheme itself is found to be defective or is to be disapproved, sub-section (3)(a) and proviso to sub-section (4) of Section 10A oblige the MCI and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The Statute thus recognizes that before any adverse decision is taken as regards the Scheme, the applicant must be afforded reasonable opportunity. This facet has been considered by this Court while dealing with issues under Section 10A of the Dentists Act in **Swami Devi Dayal**. It was laid down that the requirement of following the principles of natural justice is available at two stages, first where the Dental Council of India finds deficiencies during its inspection and secondly at the level of the Central Government before it passes any adverse orders after receipt of the recommendations by the Dental Council of India. The observations in **Swami Devi Dayal** while considering provisions of Section 10A of the Dentists Act which are *pari materia* with Section 10A of the Act, must apply with equal force in relation to cases under the Act. In paragraphs 22.2 and 22.3 it was laid down in **Swami Devi Dayal** as under:

G “22.2 It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under sub section (2) of Section 10A of the Act. Once it is found by the DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case Scheme is found to be deficient, sub section (3) (a) of Section 10A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to

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rectify the deficiencies, if any, specified by the DCI. Second A  
stage of adherence to the principles of natural justice is  
provided at the level of Central Government at the time when  
it has to take final decision, after the receipt of the  
recommendation sent by the DCI. This requirement of  
hearing is stipulated in proviso to sub section (4) of Section B  
10A, in the event the Central Government is proposing to  
disapprove the scheme.

22.3 The expression "opportunity of being heard" occurring C  
in this proviso would mean that the material that goes  
against the applicant and is to be taken into consideration,  
is to be supplied to the applicant within an opportunity to  
make representation. For this purpose either the report of  
the DCI itself can be supplied or atleast the deficiencies D  
pointed out in the report have to be communicated by the  
Central Government to the applicant with an opportunity to  
furnish its comments thereupon. At that stage while giving  
its reply, if the applicant claims personal hearing, such a  
personal hearing should also be accorded."

24. The Scheme under Section 10A, with due regard E  
to the factors referred to in sub-section (7), may contemplate  
putting in place necessary facilities at a later point of time.  
Paragraphs 7(b) and 8(3) of the Regulations also speak of  
defining and achieving annual targets respectively. Naturally, F  
it needs to be assessed and verified whether such annual  
targets are achieved or not. The timely assessment is integral  
to the Scheme itself and the MCI and the Central Government  
are therefore obliged and required to conduct renewal G  
inspections every year so as to ensure that the establishment  
of the Medical College and expansion of hospital facilities are  
completed in time and in accordance with the Scheme. In  
*Swamy Devi Dayal* it was observed that the provision  
requiring such opportunity being given to the applicant applies H  
not only at the initial stage when permission for establishment

A of new College is under consideration but must apply even in cases of subsequent renewal of such permission. In our view, the ratio in **Swamy Devi Dayal** must apply as regards cases of renewal under the Act.

B 25. As regards cases of renewal, it was laid down in **Priyadarshini** that the process of decision making for grant of fresh or initial permission for establishment of a new college is exhaustive and elaborate when compared to such decision making in regard to grant of renewal of permission for the four  
C subsequent years. It was further stated that before grant of initial permission the aspects whether the institution would be in a position to offer the minimum standards of education in conformity with the Act and Regulations and whether the institution has adequate resources and whether the institution  
D has provided or will be able to provide within the time limit specified in the Scheme all the required facilities and faculty are required to be considered and scrutinized very closely. On the other hand for the purposes of grant of renewal what is required to be considered is whether the prescribed faculty and infrastructure is available. Considering renewal cases on  
E a parameter distinct and different from that relating to establishment of a new college for the first time, it was observed that the entire process of verification and inspection relating to renewal ought to be done well in time so that the existing  
F colleges have adequate and reasonable time to set right the deficiencies or offer explanation to the deficiencies.

G 26. In the light of the aforesaid facets namely that the Scheme under Section 10A may itself contemplate stage wise achievement of annual targets and the requirements of reasonable opportunity to be afforded not only at the initial stage but also in cases of subsequent renewal and further that the opportunity must be afforded at both the stages namely by the MCI as well as by the Central Government, the Schedule  
H under the Regulations must accommodate and provide for

adequate time limits to take care of such eventualities. The Schedule which was brought in force by way of an amendment dated 21.09.2012 unfortunately does not provide for such stage wise consideration. It simply gives four stages without indicating any time limits to ensure grant of such reasonable opportunity in case the decisions of disapproval are taken against the applicants. It also does not speak of any compliance verification. The pattern that emerges in the present cases is common and consistent in that the inspections were undertaken in and around April/May 2014 and the letters of disapproval were sent by the Central Government on or about 15<sup>th</sup> July, 2014. Though the compliance was reported, no verification in that behalf was undertaken.

27. The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students' community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of :

(A) Initial assessment of the application at the first level

A should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

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D (B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise Inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

E (C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings, the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

F (D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

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H (E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still

persist or had not been removed, the applicant will stand A  
disentitled so far as that academic year is concerned.

28. As against the Schedule brought in by Notification B  
dated 21.09.2012, the draft Schedules submitted by Mr. Vikas Singh, learned Senior Advocate appearing for the MCI do make provisions for stage wise consideration and set time limits therefor. They also provide for hearing by the Central Government under Section 10A(4) and compliance verification assessment by the MCI. We accept the submission of Mr. Vikas Singh that the draft Schedules suggested and placed C  
by the MCI will now take care of all foreseeable situations and ensure availability of opportunity at all possible stages. In our view the draft Schedule so submitted by the MCI be given proper statutory status.

29. The cases in hand show that the Central Government D  
did not choose to extend the time limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in *Priya Gupta* it did exercise that power in favour of Government Medical Colleges. The decision of this Court E  
in *Priya Gupta* undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the F  
Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in *Priyadarshini*. The Central Government is G  
thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with H  
*Priyadarshini* where similar Note in pari materia Regulations

- A was considered by this Court. We therefore hold that the directions in *Priya Gupta* must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations.
- B However the dead line namely 30<sup>th</sup> of September for making admissions to the first MBBS course as laid down by this Court in *Madhu Singh* and *Mridul Dhar* must always be observed.

- C 30. Since the deadline for making admissions was over and there was no formal permission to establish new Medical Colleges or to increase the intake capacity in respect of existing Colleges, applicants in Categories I and II were not considered fit for grant of any interim relief. For the same reasons no relief can be granted to them. Consequently, the
- D writ petitions and appeals arising from the special leave petitions in Categories I and II except one arising out of SLP(C) No.23512 of 2014 are dismissed. Said appeal from SLP(C) No.23512 of 2014 at the instance of the MCI is allowed and the order passed by the High Court is set aside. No orders
- E are required in Transfer Petition No. 1217 of 2014 and it stands dismissed. The relief granted in respect of those falling in Category III, vide orders dated 18.09.2014 and 25.09.2014 is made absolute in terms of those orders and the writ petitions and appeals arising from special leave petitions in Category
- F III stand disposed of in such terms.

- G 31. The MCI and the Central Government are directed to discharge their functions in accord with the concerned Regulations and the Statute and in keeping with the observations made hereinabove.

32. All matters stand disposed of in above terms. No order as to costs.

Kalpana K. Tripathy

Matters disposed of.

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